Supreme Court, U.S.
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No. 98-959

In The

Supreme Court of the United States

October Term, 1998

PRECISION CUTTING SERVICES, INC.,

Petitioner,

vs.

KING OCEAN CENTRAL AMERICA, S.A.,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Florida

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REPLY TO QUESTIONS PRESENTED

Petitioner has mis-characterized the current law and its application to the facts of this case in the questions presented by adding the phrase " . . . [W]hen the clear language of COGSA makes it effective only during the ocean voyage "tackle to tackle" and the clear language of Carmack makes it effective during the entire overland carriage?"

The terms of the Carriage of Goods by Sea Act, 46 U.S.C. §§ 1300-1315 (COGSA) can be extended to the inland carriage by agreement between the parties, *Brown & Root, Inc., v. M/V Peisander,* 648 F.2d 415, 1982 AMC 929 (5th Cir. 1981) and can include other parties by what is known as the "Clause Paramount" and "Himalayan Clause". In addition, the Carmack Amendment, 49 U.S.C. § 11707, on its face, applies only to carriers subject to Phase I, II, and IV of the Interstate Commerce Act.

PARENT COMPANIES AND NONWHOLLY OWNED SUBSIDIARIES

Respondent King Ocean Central America, S.A., pursuant to Rule 29.6, provides the following list of the parent companies and nonwholly owned subsidiaries of King Ocean Central America, S.A.:

1. King Ocean Central America, S.A. – a parent company.

King Ocean Central America, S.A. has no subsidiaries.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondent, King Ocean Central America, S.A. (King Ocean), respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Supreme Court of Florida's opinion in this case. That opinion is reported at 717 So.2d 507, 1998 AMC 2372 (Fla. 1998).

REPLY TO JURISDICTION

The date of the Supreme Court of Florida's opinion is June 12, 1998, not January 12, 1998.

REPLY TO STATEMENT OF THE CASE

King Ocean submits the following Reply to Statement of the Case to present to the Court the areas of disagreement with the statement submitted by Petitioner.

Petitioner has misstated the intent of Congress. The intent of Congress was and is to provide for a one year statute of limitations for ocean common carriers which, in the advent of inter-modal transport services, can be extended by agreement to cover the inland portion of the carriage. This extension has been authorized and approved by the federal courts and ratified by Congress by its failure to pass any corrective legislation. In contrast, Congress has specifically enacted a two year statute of limitations, provided the carrier received a written

claim within nine months of delivery, for the inland common carriers subject to the jurisdiction of the Interstate Commerce Act. The two year statute of limitations begins to run from the date of written denial of the filing of the claim. In fact, petitioner is asking this Court to override the intent of Congress by applying a new statute of limitations to both the ocean and inland common carriers.

Petitioner's contention that there is a conflict between the two federal statutes, 46 U.S.C. §§ 1300-1315 and 49 U.S.C. § 11707, and the holdings of the Eleventh Circuit Court, *Swift Textiles, Inc. v. Watkins Motor Lines, Inc.*, 799 F.2d 697 (11th Cir. 1986), *cert. denied*, 480 U.S. 935, 107 S.Ct. 1577, 94 L.Ed.2d 768 (1987) and the Supreme Court of Florida is incorrect. A review of the applicable statutes and the opinions clearly show that the only conflict is between the ruling of the Third District Court of Appeals of Florida in *Harvest International, Inc., v Tropical Shipping & Construction Co., Ltd.*, 644 So.2d 112 (Fla. 3d DCA 1994) and those various federal decisions.

The Supreme Court of Florida's opinion, *Precision Cutting Services, Inc. v. King Ocean Central America, S.A.*, 717 So.2d 507, 1998 AMC 2372 (Fla. 1998) and Judge Cope's specially concurring opinion, Appendix-C, pg. 3 of Petitioner's brief, are consistent with the applicable federal law.

Petitioner's statement that King Ocean conceded that COGSA had no application and that the extension of COGSA by agreement was not raised at the trial level is incorrect. King Ocean's position throughout the proceedings was that COGSA applied pursuant to the terms and conditions of its bill of lading.

Petitioner's reliance on *Swift Textiles, Inc. v. Watkins Motor Lines, Inc.*, 799 F.2d 697 (11th Cir. 1986), *cert. denied*, 480 U.S. 935, 107 S.Ct. 1577, 94 L.Ed.2d 768 (1987) is misplaced. In *Swift* the question presented was whether the inland carrier was subject to state (Georgia) law or the Carmack Amendment. Additionally, there was no through ocean bill of lading.

All of the cases relied upon by the Petitioner do not involve the liability of an ocean carrier under its bill of lading for inland transportation.

REASON WHY THE PETITION SHOULD BE DENIED

There is no conflict between the terms of the Carriage of Goods by Sea Act, the holdings of the various federal courts and the ruling of the Supreme Court of Florida. In fact, they are consistent.

CONCLUSION

Foe these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Dated February 1, 1999.